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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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15 TRI-VALLEY CARES, MARYLIA KELLEY,) Case No.:
16 JANIS KATE TURNER, and JEDIDJAH DE) STIPULATION SETTING BRIEFING AND
17 VRIES,) HEARING SCHEDULE AND LIMITING
18 Plaintiffs,) OPERATION OF PROJECT UNDER
19 vs.) REVIEW
20 UNITED STATES DEPARTMENT OF)
21 ENERGY, NATIONAL NUCLEAR)
22 SECURITY ADMINISTRATION, and)
23 LAWRENCE LIVERMORE NATIONAL)
24 LABORATORY,)
25 Defendants)
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STIP. SETTING BRFG. AND HRG. SCHD. AND LIMITING OPERATION OF PROJECT UNDER REVIEW/[PROPOSED]

1 THROUGH THEIR UNDERSIGNED COUNSEL, the parties hereby agree and stipulate as
2 follows:

- 3 1. On March 10, 2008, Plaintiffs filed a complaint challenging the Department of Energy's
4 ("DOE") compliance with the National Environmental Policy Act ("NEPA") in approving
5 the construction and operation of a Biosafety Level 3 ("BSL-3") facility at Lawrence
6 Livermore National Laboratory ("LLNL") in Livermore, California.
- 7 2. Plaintiffs seek interim injunctive relief against the continued operation of the LLNL BSL-3
8 facility pending resolution of their claims on the merits. To avoid forcing the parties and
9 this Court to expend unnecessary resources addressing a request for a temporary
10 restraining order, the parties have conferred and agreed to a schedule for resolving
11 Plaintiffs' request for preliminary relief and to a period of limited operations at the LLNL
12 BSL-3 facility.
- 13 3. The parties therefore proposed the following schedule for resolution of Plaintiffs' Motion
14 for Preliminary Injunction:
 - 15 a. Plaintiffs shall file and serve their Motion for Preliminary Injunction and brief in
16 support thereof by March 10, 2008.
 - 17 b. Defendants shall file and serve their brief in opposition to Plaintiffs' Motion for
18 Preliminary Injunction by March 26, 2008.
 - 19 c. Plaintiffs shall file and serve their reply in support of their Motion for Preliminary
20 Injunction by April 2, 2008.
 - 21 d. Should the Court desire oral argument on Plaintiffs' Motion for Preliminary
22 Injunction, the parties respectfully request that a hearing be held within two weeks
23 of April 2, 2008, and will confer to suggest a desired schedule to the Court.
- 24 4. Plaintiffs agree not to seek a temporary restraining order for so long as the voluntary
25 limitation on operations described below remains in effect. In exchange, Defendants agree
26 to the following voluntary limitations on operations in the LLNL BSL-3 facility for a
27 period of sixty (60) days:
 - 28 a. No aerosol testing;

STIP. SETTING BRFG. AND HRG. SCHD. AND LIMITING OPERATION OF PROJECT UNDER REVIEW/[PROPOSED]

- 1 b. No rodent infection experiments;
- 2 c. No production, generation, or knowing receipt of genetically modified biological
- 3 material that would require management of the facility at the BSL-3 level; and
- 4 d. The total amount of biological agents in the facility for which BSL-3 containment
- 5 is recommended in the 4th Edition of *Biosafety in Microbiological and Biomedical*
- 6 *Laboratories* shall not exceed 100 milliliters (ml).
- 7 5. The undersigned counsel for the parties further agree to consult no later than April 14,
- 8 2008, to determine whether a further limitation on operations in the LLNL BSL-3 facility
- 9 is appropriate pending this Court's ruling on Plaintiffs' Motion for Preliminary Injunction.
- 10 6. Defendants shall produce the Administrative Record by April 11, 2008.
- 11 7. The parties will try to informally resolve any issues relating to the content of the
- 12 Administrative Record. If informal efforts fail, plaintiffs shall have until April 25, 2008, to
- 13 file any motion to supplement the Administrative Record.
- 14 8. Plaintiffs do not consider this action to be related to another under Civil L.R. 3-12.
- 15 Defendants believe this case is related to plaintiffs' Tri-Valley CAREs, Marylia Kelley,
- 16 and Janis Kate Turner's prior challenge to the DOE's approval of the construction and
- 17 operation of the LLNL BSL-3 facility in Tri-Valley CAREs et al. v. Dept. of Energy, Case
- 18 No. CV-03-3926-SBA (N.D. Cal.). That case was terminated on June 1, 2007. Defendants
- 19 will file an Administrative Motion to Consider Whether Cases Should be Related.
- 20 9. The foregoing agreements are not intended, and may not be cited by any party, as
- 21 admission of any issue of fact or law in this or any other judicial or administrative
- 22 proceeding.

24 | Dated: March 10, 2008



Robert J. Schwartz
Attorney for Plaintiffs

27 | Dated: March 10, 2008


Barclay Samford (approved telephonically)
Attorney for Defendants

The parties may by stipulation, or by motion for good cause shown, seek this Court's approval of extensions of the foregoing deadlines.

[PROPOSED] ORDER

GOOD CAUSE APPEARING from the parties' foregoing stipulation,
IT IS SO ORDERED.

Dated: March ___, 2008

[Name]

United States District Judge